

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,
Plaintiff(s),
v.
ERIK HOLMAN,
Defendant(s).

2:11-CR-457 JCM (CWH)

ORDER

15 Presently before the court is the report and recommendation of Magistrate Judge Hoffman.
16 (Doc. # 72). No objections have been filed even though the deadline date for filing objections has
17 expired.

18 Defendant filed a motion to dismiss the indictment in this case based on allegations that the
19 government had failed to preserve evidence. (Doc. # 62). The magistrate judge recommended that
20 the court deny the motion, as it is clear the electronic files in question were purged prior to the time
21 that the government gained access to the computer system. (Doc. # 72).

22 This court “may accept, reject, or modify, in whole or in part, the findings or
23 recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). Where a party timely objects to
24 a magistrate judge’s report and recommendation, then the court is required to “make a de novo
25 determination of those portions of the [report and recommendation] to which objection is made.”
26 28 U.S.C. § 636(b)(1).

27

1 Where a party fails to object, however, the court is not required to conduct “any review at all
2 . . . of any issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985).
3 Indeed, the Ninth Circuit has recognized that a district court is not required to review a magistrate
4 judge’s report and recommendation where no objections have been filed. *See United States v.*
5 *Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard of review employed by the
6 district court when reviewing a report and recommendation to which no objections were made); *see*
7 *also Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003) (reading the Ninth Circuit’s
8 decision in *Reyna-Tapia* as adopting the view that district courts are not required to review “any
9 issue that is not the subject of an objection.”). Thus, if there is no objection to a magistrate judge’s
10 recommendation, then this court may accept the recommendation without review. *See, e.g.*,
11 *Johnstone*, 263 F. Supp. 2d at 1226 (accepting, without review, a magistrate judge’s recommendation
12 to which no objection was filed).

13 Nevertheless, this court finds it appropriate to engage in a de novo review to determine
14 whether to adopt the recommendation of the magistrate judge. Upon reviewing the recommendation
15 and underlying briefs, this court finds good cause appears to ADOPT the magistrate's findings in
16 full.

17 || Accordingly,

18 IT IS HEREBY, ORDERED, AND DECREED that the report and recommendation of
19 Magistrate Judge Hoffman (doc. # 72) be, and the same hereby is, ADOPTED in its entirety.

20 IT IS FURTHER ORDERED defendant's motion to dismiss the indictment (doc. # 62) is
21 DENIED.

22 || DATED February 24, 2014.

James C. Mahan
UNITED STATES DISTRICT JUDGE